

Insights and Best Practices Focus Paper



Authorities

First Edition

**Deployable Training Division
Joint Staff J7**

July 2013

Approved for public release; distribution is unlimited

This is the First Edition of the Authorities Insights and Best Practices Focus Paper, written by the Deployable Training Division (DTD) of the Joint Staff J7 and published by the Joint Staff J7.

First Edition: July 2013

Written by Deployable Training Division. POC is Mr. Mike Findlay.
Deployable Training Division, Deputy Director Joint Staff J7, Joint Training
116 Lake View Parkway
Suffolk, VA 23435-2697
Email: js.dsc.j7.mbx.joint-training@mail.mil

Accessibility: Available in PDF format on the following websites:

Joint Lessons Learned Information System (JLLIS) (*CAC enabled and registration required*):
<https://www.jllis.mil/JSCC/apps/index.cfm>

Joint Doctrine, Education, and Training Electronic Information System (JDEIS) (*CAC enabled*):
<https://jdeis.js.mil/jdeis/index.jsp?pindex=0>

All Partners Access Network (APAN) (*Registration required*):
<https://community.apan.org/default.aspx>

Joint Electronic Library (*Public website*):
<http://www.dtic.mil/doctrine/index.html>

Joint Staff J7 Joint Training Intelink (*CAC enabled*):
<https://intelshare.intelink.gov/sites/jcw/jt/default.aspx>

Releasability: There are no releasability restrictions on this publication. Approved for public release; distribution is unlimited.

Disclaimer: The views in this paper are those of the author and do not necessarily reflect the official policy or position of the Joint Staff, the Department of Defense (DOD), or the United States Government (USG).

PREFACE

The Joint Staff J7 supports the CJCS and the Joint Warfighter through joint force development to advance the operational effectiveness of the current and future joint force. This paper, written by the Deployable Training Division (DTD), helps inform both the joint warfighters and key functions within the J7, notably lessons learned, doctrine, education, and future joint force development. In addition to this paper, the DTD has also developed an overarching Joint Operations Insights and Best Practices Paper and numerous other focus papers that share insights and best practices for various challenges observed at joint headquarters. All of these papers are unclassified for broad accessibility. I commend these papers for your reading.

The DTD gains insights on operational matters through regular contact and dialogue with combatant and joint task force commanders and their staffs as they plan, prepare for, and conduct operations. The DTD observer/trainers collect and compare practices among the different headquarters, draw out and refine “insights” and “best practices,” and share them with the joint force.

We are fortunate to have several senior flag officers, active and retired, assist in development and vetting of these insights and best practice papers. Of note, General (Retired) Gary Luck, a Senior Fellow at the National Defense University, plays an active part. Their participation not only helps keep the DTD trainers at the theater-strategic and operational level, but also ensures that they retain a commander-centric perspective in these papers.

Please pass on your comments to DTD’s POC Mr. Mike Findlay so that we can improve this paper. Email address is: js.dsc.j7.mbx.joint-training@mail.mil.



BRADLEY A. BECKER
Brigadier General, U.S. Army
Deputy Director J7, JS, Joint Training

Table of Contents

1.0	Executive Summary	1
2.0	Authority as the Basis for Legitimacy	2
3.0	Sources of Authority	3
4.0	Identifying, Understanding, and Developing Authorities	6
5.0	Authority to Use Force	10
6.0	Authority to Spend Money	15
7.0	Authority Over People	17
8.0	Cyber Authorities	18
9.0	Intelligence Oversight	20
	GLOSSARY	GL-1

This page intentionally left blank

1.0 EXECUTIVE SUMMARY. This paper focuses on the critical role that identification, understanding, and development of authorities plays in the successful planning and execution of military operations. The term “authorities,” which is used frequently by commanders and their staffs, is not defined in doctrine and has multiple dictionary definitions. In military parlance, it has come to encompass similar concepts such as power, permission, license, leave, mandate, right, and ability. However it is defined, authority emanates from law, regulation, and policy and recent history demonstrates that the sources of authority affecting military operations have increased both in number and in complexity. In addition, the whole-of-government approach to current operational challenges brings to bear a still broader field of authorities that cross many traditional boundaries. The network of authorities significant to the commander grows even more in the planning and execution of multinational operations where gaps and seams exist between national priorities and societal norms. Gaining unity of effort with partner nations, non-DOD agencies, international bodies, and non-governmental organizations requires an understanding of the authorities guiding these partner organizations.

The operationalization of mission command and the advent of Globally Integrated Operations as outlined in the Capstone Concept for Joint Operations Joint Force 2020 identified co-creation of context as foundational to building trust and empowering subordinates and mission partners to act. Subordinates and mission partners are empowered when they understand the authorities that support and guide their decisions and actions. This requires the commander to achieve a common shared understanding of authorities vertically across echelons and horizontally across mission partner organizations.

We have observed legal, interagency, inter-organizational, and policy advisors playing a larger role in the planning and execution of military operations. They are active participants in the planning process and commander’s decision cycle. These advisors attend battle rhythm events, work as part of operational planning teams, assist in reviewing and drafting orders and plans, and provide assistance and advice in areas well beyond the confines of traditional Title 10 activities. Finding the right advisors to inject this knowledge early in the planning effort is a key challenge.

We see the pivotal role of the joint force Staff Judge Advocate (SJA) who, working with subject matter experts and liaisons from partner organizations, anticipates, understands, and pursues necessary authorities. Joint force commanders rely heavily on their legal advisors for accurate, timely advice concerning authorities and limitations that impact planning and execution. Their recommendations also help shape the commander’s guidance and intent.

Insight:

- Conduct horizontal and vertical dialogue and translation to ensure co-creation of context, establish a shared common understanding of authorities, allow for appropriate delegation of authority, and establish trust and confidence in operationalizing mission command.

Best Practice:

- Fully incorporate and leverage legal, interagency, inter-organizational, and policy expertise early in the planning effort to identify, understand, and develop theater-specific strategic and operational authorities, policies, and limitations that affect mission execution.

2.0 AUTHORITY AS THE BASIS FOR LEGITIMACY. Adhering to authority is more than an exercise in following the rules. When authorities are ignored, misunderstood, or applied improperly, military actions can be characterized as illegitimate or even criminal. Adherence to authority is, therefore, more than simply altruistic -- it contributes to the overall strategy of the commander. Effective military operations in the post-9/11 world require unity of effort to bring the capabilities of all U.S. and international Diplomatic, Informational, Military, and Economic (DIME) partners to bear on the challenges presented to the commander. Whether combating terrorism, conducting stability operations, or providing foreign humanitarian assistance (FHA), joint forces recognize the value of unity of effort and conduct unified action in their daily

Unified action — The synchronization, coordination, and/or integration of the activities of governmental and nongovernmental entities with military operations to achieve unity of effort.

Unity of effort — Coordination and cooperation toward common objectives, even if the participants are not necessarily part of the same command or organization - the product of successful unified action.

- JP 1-02

activities. We have progressed far beyond a singular demand for unity of command in these partnership activities to a more realistic and viable unified action approach to achieve unity of effort - recognizing that each U.S. and foreign partner has unique authorities, responsibilities, capabilities, and limitations. There is also a strong linkage between actions that adhere to authority and the synchronized communication of the commander. Legitimacy will hinge not only on the reality of adhering to authority, but also the perception of it by the national and international audience.

Insight:

- Adherence to authority fosters legitimacy and legitimacy generates national and international support for military operations.

3.0 SOURCES OF AUTHORITY. Authority, in its simplest form, can be characterized as the power to perform some act or take some action. It is not a doctrinal term and is often characterized as permission.¹ In reality, authority often provides both the “permission” to do something as well as defining those actions that cannot be taken. Authorities help to clarify the end state and define permissible means and methods for achieving the end state. At times, this has been referred to as providing the “left and right limits” within which one has freedom of action based on the guidance and intent from higher echelons.

a. United States Domestic Authority. For U.S. forces, domestic sources of authority include the Constitution, written statutes, and judicial decisions. The bulk of these authorities reside in the fifty numbered titles of the United States Code, identifying the authorities and responsibilities of the different branches and agencies. There are significant differences in responsibilities, requirements, capabilities, and limitations from one title to the next. Military commanders and their staffs are typically familiar with the large and diverse body of authorities under Title 10 of the United States Code. The authority necessary to equip and train the armed forces, to establish a command structure and good order and discipline, and areas of operational authority all are addressed in Title 10. For example, the Unified Command Plan (UCP) that establishes the missions and geographic responsibilities among the combatant commanders finds its basis in authority in the Goldwater-Nichols Defense Reorganization Act of 1986, itself a part of Title 10.

The command authorities that define the roles and responsibilities of the combatant commanders and their subordinate commanders emanate from Title 10 and require clear understanding in order for the joint force to operate effectively. The combatant commander exercises authority provided directly from Goldwater-Nichols and the UCP. This “COCOM” authority is not transferable and cannot be delegated. It authorizes a combatant commander to perform those functions of command over assigned forces involving organizing and employing commands and forces; assigning tasks; designating objectives; and giving authoritative direction over all aspects of military operations, joint training, and logistics necessary to accomplish the missions assigned to the combatant command.²

<i>Pertinent U.S. Code Titles</i>
<i>Title 6: Domestic Security</i>
<i>Title 10: Armed Forces</i>
<i>Title 14: Coast Guard</i>
<i>Title 22: Foreign Relations</i>
<i>Title 32: National Guard</i>
<i>Title 50: War and National Defense</i>

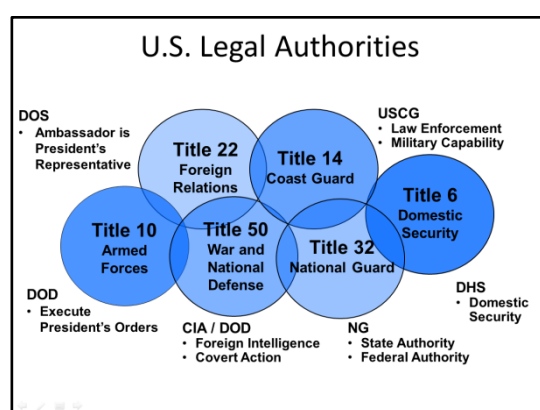
¹ We have observed efforts within staffs to distinguish between the terms “authority” and “permission”, stating that the commander had the authority to take an action, but did not have the permission. In our view, this is a distinction without a difference. Where higher headquarters has authorized an action to be taken by a subordinate but has withheld the actual authority to approve the action, authority to take the action remains with higher headquarters and does not devolve to the subordinate until approval is given. In essence, the situation described is a “be prepared to” mission, where the subordinate plans and prepares to undertake some action, but must await the authority to act.

² U.S. Code Title 10, Section 164 also includes the following COCOM authorities over assigned forces: prescribing the chain of command to the commands and forces; organizing commands and forces as necessary to carry out assigned missions; employing forces as necessary to carry out assigned missions; assigning command functions to subordinate commanders; coordinating and approving those aspects of administration and support (including control of resources and equipment, internal organization, and training) and discipline necessary to carry out assigned missions; and exercising authority with respect to selecting subordinate commanders, selecting combatant command staff, suspending subordinates, and convening courts-martial.

Operational control (OPCON) is inherent in COCOM authority and may be delegated to subordinate commanders. OPCON is the authority to perform those functions of command over subordinate forces involving organizing and employing commands and forces, assigning tasks, designating objectives, and giving authoritative direction necessary to accomplish the mission. It includes authority over all aspects of military operations and joint training necessary to accomplish assigned missions. OPCON does not, in and of itself, include authoritative direction for logistics or matters of administration, discipline, internal organization, or unit training. These matters normally remain within the Title 10 authorities of the various armed service branches.

Tactical control (TACON) of assigned or attached forces is inherent in OPCON and can be delegated to subordinate commanders. TACON is limited to the detailed and, usually, local direction and control of movements or maneuvers necessary to accomplish missions or tasks assigned. Another distinction in command authorities can be seen where superior authority designates a subordinate command as the supported or supporting command for a specific mission. In this case, the supporting command or commands are obligated to provide available capability under their control in support of the supported commander. These authorities must all be spelled out in clear and concise terms in operational plans and orders.

COCOM authority includes directive authority for logistics (DAFL), which is the authority to issue those directives to subordinate commanders that are necessary to ensure the effective execution of approved operational plans. Essential measures include the optimized use or reallocation of available resources and prevention or elimination of redundant facilities and/or overlapping functions among the Service component commands. Under this authority, the Combatant Commander may delegate common support capability directive authority to subordinate commands, which allows for centralized control of specific logistics functions in a theater or area of operations. This authority is not commonly used during peacetime or Phase 0 operations because other logistics control options exist, such as executive agency and lead Service designations.³



The whole of government approach requires knowledge of a much broader and even more diverse body of authorities. For example, these can include support to domestic operations involving Title 14 Coast Guard and Title 32 National Guard authorities; cyber operations involving Titles 6, 18, 28, and 50; and support to Rule of Law efforts and foreign embassies under Title 22. These authorities are not always distinct from one another, with overlaps, gaps, and seams appearing when brought together to support a combined military and civilian agency operation. In that case, the authorities look

more like those in the figure to the left. Some examples of missions where the joint force will encounter significant overlapping of these authorities are Cyber Operations, Defense Support of Civil Authorities (DSCA), Foreign Humanitarian Assistance (FHA), Alien Migrant Interdiction Operations (AMIO), Counter-terrorism (CT), and Non-combatant Evacuation Operations (NEO).

³ Joint Pub 4.9, Logistics, contains a more detailed description of DAF and the delegation of directive authority for common support capability.

Authority can also be expressed in national policy. Authority derived from national policy can be enabling or limiting. In some cases, policy can provide very concrete boundaries, such as the March 2011 Presidential declaration of a “no boots on the ground” national policy that had to be adhered to in planning for Operations ODYSSEY DAWN and ODYSSEY GUARD in Libya.

b. International Authority. International law springs from codified law found in treaties and agreements, as well as from customary law based on the practice of nations over time. Some of these international agreements establish and empower international bodies such as the U.N. and NATO. For example, when the U.N. Security Council issues a resolution (U.N. Security Council Resolution or UNSCR), the agreements entered into by U.N. member states provides authority for acting under the UNSCR. International law will impact on planning and execution of virtually every military operation. Because the body of international law is often drawn from custom and practice rather than written laws, partner nations will bring a variety of interpretations of international law to the planning effort.

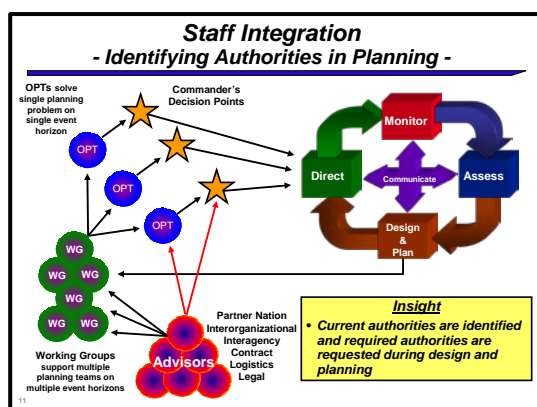
c. Authorities in Multinational Operations. All partner nations, including the U.S., bring differing domestic laws and national policies. As a result, each partner nation will have diverse capabilities and limitations. Understanding these disparate authorities is essential to taking full advantage of the capabilities within a coalition and avoiding wasted planning effort. Command authority in an international operation will be linked to the mission authority. For example, a coalition formed under a lead nation will leave coalition forces under their national command authority. A coalition formed under a multi-national organization such as the United Nations (U.N.) or the North Atlantic Treaty Organization (NATO) will place coalition forces under the command authority of the U.N. or NATO commander. Operation Desert Storm in Kuwait was undertaken under the lead nation model, while the security mission by the International Security Assistance Force (ISAF) in Afghanistan was established as a NATO-led mission.

Insights:

- Authority can be enabling or limiting or both and often provides guidance on “how” as well as “what” can be done.
- Authorities appear in many forms and emanate from many domestic and international sources, including national policies.
- Understand and plan for the unique capabilities and limitations created by differing national authorities, including national policies.

4.0 IDENTIFYING, UNDERSTANDING, AND DEVELOPING AUTHORITIES. Joint force commanders and planners find themselves more and more frequently preparing for and executing non-traditional missions involving unfamiliar sources of authority. Many authorities will be unfamiliar to the commander and staff, demanding legal and subject matter expertise within staff planning and the commander's decision cycle to assimilate authority identification, understanding, and development. In many cases, the commander is in a supporting role to a non-DOD supported agency. The whole-of-government approach to these missions presents unique challenges that require seeking out and making use of subject matter expertise not always readily available within the commander's staff. Integration of interagency, inter-organizational, and partner subject matter experts or liaison personnel into the staff processes allows international, national, agency, and stakeholder authorities to be identified and understood. Gaining meaningful participation from subject matter experts and liaison personnel, especially those from non-DOD agencies and organizations, is not as simple as inviting them to participate in working groups. Federal agencies and non-governmental organizations are typically not as well funded or resourced as DOD entities. There just are not enough people for some of our partners to assign someone to every working group that has a need for their expertise. In addition, many non-DOD organizations have no equivalent to the DOD operational level, going straight from the strategic level to the tactical, meaning that participants will often either have high-demand competing obligations or they function at the tactical level and do not feel comfortable providing input at the operational level without guidance from the strategic level. One of the ways we have seen military staffs accommodate these high-demand, low-density assets is to focus on expanding the information sharing aperture by de-classification of information and development of commonly shared information platforms such as the All Partners Access Network (APAN).⁴ Another effective tool to facilitate partner subject matter expert participation is through the use of online conferencing and video teleconferencing.

a. Support to the Battle Rhythm. Ideally, interagency, inter-organizational, and policy advisors support the planning process by providing subject matter expertise directly to battle rhythm events in support of the commander's decision cycle. As previously discussed, however, physical presence in all pertinent events may not be feasible. In this case, the SJA may prove to



be a valuable link for authorities between working groups and partner subject matter experts. Typically, although also considered a high-demand, low-density asset, the SJA will have a more robust capability to participate in a broad range of battle rhythm events than will our interagency and inter-organizational partners. The steady state duties of the staff legal advisors will expose them to policy and other authorities from organizations and agencies with overlapping interests in the commander's area of responsibility. The legal advisors often have points of contact for subject matter expertise that they can call

⁴ The All Partners Access Network (APAN) is an unclassified, non-dot-mil network providing interoperability and connectivity among partners over a common platform. APAN fosters information exchange and collaboration between the United States Department of Defense (DOD) and any external country, organization, agency, or individual that does not have ready access to traditional DOD systems and networks.

on to provide critical information on authorities. The legal assets can be effectively used to help working groups and planning teams fill in gaps in authorities and understand the overlaps and potential conflicts.

Some planning processes, such as those involving rules of engagement (ROE), contracts or fiscal matters, and movement of forces through the sovereign land, air, or sea territory of another nation require more active up-front participation by these advisors, particularly the legal advisor. This active participation is much more than simply providing a review of the final planning product. A best practice in organizing advisory support to the planning process is development of a coverage plan. Developing a detailed coverage plan begins with a review of the battle rhythm events supporting the commander's decision cycle to determine which events require advisory support. The plan also lays out the duties, roles, and responsibilities of the advisors covering each battle rhythm event (including primary and alternates). It enables the staff sections to assist in the development and review of all plans, orders, ROE requests, and target packages being developed. The coverage plan also facilitates effective cross training and sharing of information within the staff.

Some coverage plans have included battle rhythm event binders with primary reference material and notes from previous sessions. These allowed the staff sections to ensure that legal and policy considerations and issues were shared and tracked. It also increased the other section members' situational understanding. This tracking and reference process is typically performed using an Excel spreadsheet or Access database resident on the HQ portal. This allows the staff sections to quickly share the information from the operations center and battle rhythm events and ensures a more timely understanding of events as they occur. Having the staff members attending battle rhythm events complete an event report detailing significant issues can serve as a source document for information sharing via the staff portal and/or chats. This process supports the overall understanding of the members prior to attendance at decision boards and other events, and, in the case of the SJA, fosters direct engagement with other staff principals on legal issues in a timely fashion.

b. Mission Command. The CCJO identifies the concept of Globally Integrated Operations as a means of addressing future challenges to national security. Among the eight key elements of Globally Integrated Operations identified in the CCJO are three of particular interest from the perspective of authorities: a commitment to mission command; speed in decision-making; and partnering to integrate non-DOD expertise and resources. Each of these has a large footprint in the authorities arena. The operationalization of mission command fosters delegation of authority, pushing approval levels lower in the chain of command. This in turn requires all echelons to understand and adhere to the authorities that support and limit military operations. A uniform understanding of these authorities horizontally and vertically fosters planning and execution in keeping with the commander's guidance and intent and decreases the chances of conflicting plans or actions at different levels of command. As approval levels are driven down, achieving a common and shared understanding of authorities becomes critical to support trust and confidence and expedite decision-making.

"Successful mission command demands that subordinate leaders at all echelons exercise disciplined initiative and act aggressively and independently to accomplish the mission."

- JP 3.0, 11 Aug 2011

Understanding the authorities becomes yet more difficult when partnering with non-DOD organizations that bring disparate authorities to bear on military operations. A best practice employed by successful staffs in the Mission Command construct is to utilize an authorities matrix as shown in the figure to record the authorities necessary for executing the plan, track the status of approval for those authorities, and display the approval levels for executing to those authorities. This tool fosters broad awareness of the critical authorities among the staffs at all echelons and forms an excellent briefing tool for the commander's situational awareness.

Authority	Most control				Least control		
	US COCOM	US OPCON	NATO OPCOM	NATO OPCON	CFC/USFK COMBINED OPCON	NATO TACOM	US & NATO TACON
Direct authority to deal with DOD, US diplomatic missions, agencies	X						
Coordinate CINC boundary	X						
Granted to a command	X		X				
Delegated to a command		X		X	X	X	X
Set chain of command to forces	X	X					
Assign mission/designate objective	X	X	X				
Assign tasks	X	X	X			X	
Direct/employ forces	X	X	X	X	X		
Establish maneuver control measures	X	X	X	X	X	X	X
Reassign forces	X						
Retain OPCON	X	X	X				
Delegate OPCON	X	X	X	X with approval			
Assign TACOM	X	X					
Delegate TACON	X	X	X	X	X		
Retain TACON	X	X	X	X			
Deploy forces (information within theater)	X	X	X	X			
Local direction/control designated forces	X	X					X
Assign separate employment of unit components	X	X	X				
Directive authority for logistics	X						
Direct joint training	X	X					
Exercise command of US forces in MNF	X	X	X				
Assign/reassign subordinate commanders/officers	X	May suspend or recommend reassignment					
Conduct internal discipline/training	X						

NATO Full Command and CFC/USFK Command less OPCON are basically equivalent to US COCOM, but only for internal matters

LEGEND	
COCOM	– Combatant command
OPCON	– Operational control
TACOM	– Tactical command
TACON	– Tactical control

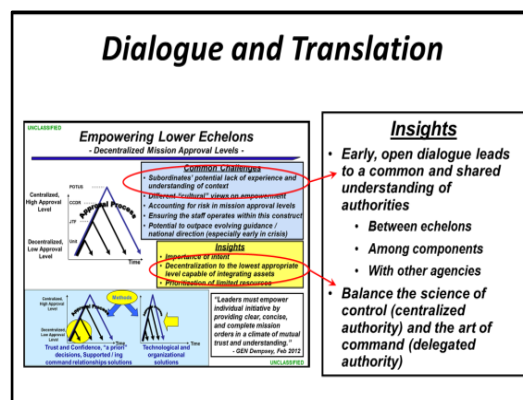
X – has this authority

 – denied this authority, or not specifically granted it

Some staffs we have observed have brought the operators, subject matter experts, and advisors together in a working group to better understand the policies they need to support the planning effort. Information flowing to the commander and staff from the working group clarifies policy to ensure uniform understanding. A similar process could be used to provide answers to complicated authorities questions raised during the design and planning process that require a multi-disciplinary approach for resolution. Another best practice we have observed involves establishing an authorities community of interest for information sharing and collaboration between DOD, agency, organizational, and partner nation authority and policy experts. When developed and used to inform commanders and their staffs, these tools help the planning effort gain ground truth and avoid wasted planning effort.

c. Dialogue and Translation. Dialogue and translation between echelons and across organizational, command, and national boundaries early in the planning process and through execution of the mission is essential to achieving a common and shared understanding of all matters in a mission command environment. This is especially so with regard to the authorities that impact on mission accomplishment. Gaining a shared understanding of authorities is a vital piece of the concept of co-creation of context that is at the heart of successful operationalization of mission command.

Understanding and delegating authorities to the lowest appropriate approval level speeds decision making in response to events, especially in crisis, but also involves an element of risk taking. This is part of the balance between the science of control and the art of command. The commander at each level sets the conditions for success by establishing a clear and common



understanding of the authorities involved in the assigned mission. Through dialogue and translation, subordinate commanders should identify the authorities they need to accomplish the mission and seek approval or delegation of those authorities from higher headquarters. This is part of the co-creation of context at the heart of mission command.

Insights:

- Identify, understand, and develop authorities early in the planning process.
- Develop a shared common understanding of authorities through horizontal and vertical dialogue and translation.
- Co-creation of context produces a shared and uniform understanding of authorities.
- Enable unified action through a clear understanding of authorities and responsibilities of the various players in the operational environments – both foreign and domestic.

Best Practices:

- Facilitate participation of high-demand, low-density subject matter experts in the battle rhythm through innovative information sharing processes and tools.
- Leverage the broad role of the legal advisors in gaining authorities information outside of traditional DOD boundaries.

5.0 AUTHORITY TO USE FORCE. One type of authority common to virtually every military operation is the authority to use force. The use of force is governed by the international law principles of the law of war, national and coalition ROE, and guidance and intent from superior commanders.

a. Law of War. Understanding the authority to use force begins with an understanding of the four pillars of the use of force under the international law of war. It is Department of Defense (DOD) policy that members of the DOD Components comply with the law of war during all armed conflicts, however such conflicts are characterized, and in all other military operations. Some of the law of war principles to be considered during the planning process are as follows:

(1) Military Necessity. The principle of military necessity justifies those measures not forbidden by international law that are indispensable for securing the complete submission of the enemy as soon as possible. However, this principle is not applied in a vacuum. It must be applied in conjunction with other law of war principles. Military necessity generally prohibits the intentional targeting of protected persons (civilians, hostile personnel who have surrendered or are otherwise "out of combat," etc.) and places (objects or places that are used for purely civilian purposes, such as hospitals, schools, and cultural property that have not been converted to or for military/hostile use) because they do not constitute legitimate military objectives in furtherance of the accomplishment of the mission.

(2) Unnecessary Suffering. The principle of unnecessary suffering forbids the employment of means and methods of warfare calculated to cause unnecessary suffering. This principle acknowledges that combatants' necessary suffering, which may include severe injury and loss of life, is lawful. This principle largely applies to the legality of weapons and ammunition. Generally, weapons and ammunition that have been issued by Department of Defense (DOD) have been reviewed to ensure compliance with the law of war and this principle. However, approved weapons and ammunition also may not be used in a way that will cause unnecessary suffering or injury. A weapon or munition would be deemed to cause unnecessary suffering if, in its normal use, the injury caused by it is disproportionate to the military necessity for it, that is, the military advantage to be gained from its use.

(3) Distinction. This principle requires parties to a conflict to distinguish between combatants and noncombatants and to distinguish between military objectives and protected property and places. Parties to a conflict must direct their operations only against military objectives. Military objectives are combatants and those objects which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offer a definitive military advantage.

(4) Proportionality. The principle of proportionality prohibits attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage expected to be gained. As such, this principle is only applicable when an attack may possibly affect civilians or civilian objects, and thereby, may cause collateral damage. Proportionality is a way in which a military commander must assess his or her obligations as to the principle of distinction, while avoiding actions that are indiscriminate.

b. Rules of Engagement. The definition of ROE, noted in the figure, is taken from JP 1-02. The word “will” in this definition is interpreted as “are authorized to” in order to more accurately reflect the fact that approved ROE measures outline the use of force permitted in a given situation, but do not direct when or where the use of force will be employed.

Ultimately, within the guidelines of the ROE and the commander’s guidance and intent, commanders and operators decide whether available force will be used, by whom, and how. Correct decisions on use of force require a solid understanding of the situation, mission, and commander’s guidance and intent. In some cases, these may dictate restraint rather than force.

Definition of ROE:

“Directives issued by competent military authority that delineate the circumstances and limitations under which United States forces will initiate and / or continue combat engagement with other forces encountered.”

***- JP 1-02, DOD Dictionary and CJCSI 3121.01B,
13 June 2005, U.S. Standing ROE***

U.S. commanders always have the authority and responsibility to use force as necessary in unit self-defense. Considerations regarding the use of force in self-defense are provided in the Standing Rules of Engagement (SROE). The SROE also provide a method for requesting supplemental ROE measures from higher headquarters. The supplemental measures can be taken from the extensive list of measures contained in the SROE or can be tailored specifically for a particular mission requirement. Developing ROE and managing ROE measures is a J3 or J5 staff function – guided by the commander. Legal, interagency, interorganizational, and policy advisors support this function, but they do not lead it. In particular, the legal advisor’s role is to

Use of force is:

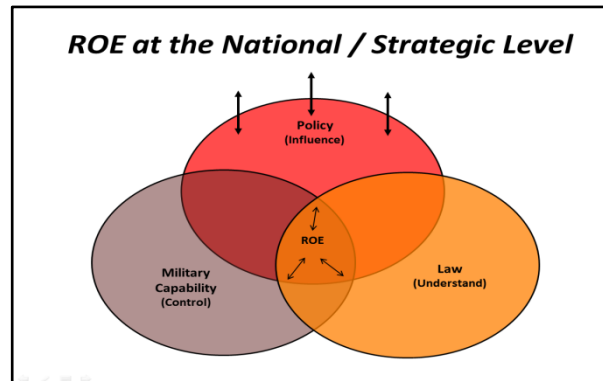
- **regulated by ROE,**
- **authorized by the chain of command, and**
- **executed within commander’s guidance and intent**

assist in the preparation of ROE supplemental measure requests and justifications to higher authority and the subsequent authorization messages to subordinate commands.

Many operations are conducted with coalition partners. Each nation, including the U.S., brings different limitations (caveats) and capabilities driven by their national laws, interests, and policies. Achieving a single set of ROE within a coalition without national caveats is unlikely. Legal, interagency, inter-organizational, and policy advisor assistance in developing ROE measures and balancing these caveats and considerations is important to achieving understanding and unity of effort. Successful coalition staffs and operational planners include partner nation representatives in their planning efforts.

An observed best practice is the use of a matrix to depict approved ROE measures and the caveats associated with each coalition member, including the U.S. This matrix helps create a shared understanding of the capabilities and use of force limitations that each partner nation brings to the fight. Note that these matrices not only highlight limitations, but also showcase the different capabilities of each. The different national policies and restrictions on the use of force in coalition operations can cause dilemmas for commanders involving the use of force. Personal interaction between the commander and coalition commanders on capabilities and caveats fosters trust and confidence and promotes better understanding of challenges and opportunities. There is benefit in asking what a coalition partner “can do,” rather than engaging in a more negative approach by asking what they “can’t do.”

The factors in the figure on the right influence both the mission assigned to the joint force and the ROE. This is how commanders at the national and strategic level often see ROE and the use of force. The law relating to the use of force is relatively stable and slow to change. The military capability is also well-known and largely controlled by the military commanders. The third factor, policy, is fluid and subject to sudden and unpredictable change, making it difficult to plan ahead for the authorized use of force. Commanders clearly cannot control policy, but can and should influence policy through dialogue and translation with higher authority early in the planning process. This becomes especially important between military commanders and civilian leaders at the national level.⁵



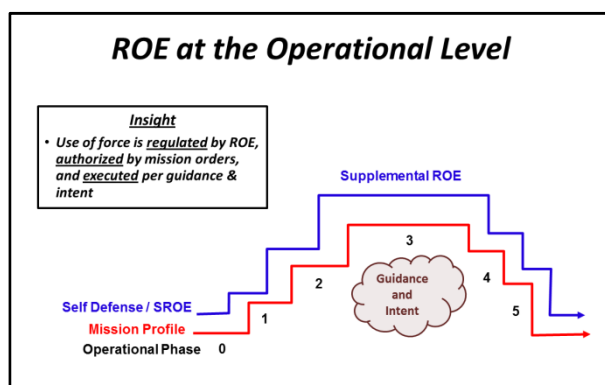
An ROE Working Group (ROEWG) is often used to proactively develop ROE and respond to requests for additional ROE measures.⁶ The ROEWG includes the necessary experts and partners for each mission, including legal, interagency, inter-organizational, and policy subject matter experts, under the leadership of the J3 or J5. But even the most thorough planning cannot account for all eventualities. The need for additional ROE measures may arise during mission execution. ROE issues usually arise as requests from subordinate commands, direction from higher authority or as the result of additional planning efforts by a JTF staff in response to changes in the mission or the operating environment. Successful staffs have a monitoring and management process to respond to these unanticipated ROE requirements. This is best accomplished by having a designated watch stander in the joint operations center (JOC) responsible for addressing ROE and other use of force issues. Often, this is the legal watch stander in the JOC. We have observed several very effective “battle drill” processes that enable timely and quality support to ROE development. These battle drills center around the JOC, collaboration with necessary stakeholders, and command involvement as necessary to rapidly gain approvals. In this way, the staff is able to stay ahead of events in the deliberate planning process and react quickly in crisis action planning to ensure that the joint force has the use of force authority necessary to accomplish the mission.

c. Guidance and Intent. Ultimately, ROE provide authority for use of force available to accomplish the assigned missions. They provide the range, or “what” force is authorized. The “how” and “when” to apply force is determined at each level based on both the approved ROE and the amplifying guidance and intent provided by the commander. This combination of ROE and guidance and intent forms a comprehensive concept of operation or “mission profile.”

⁵ Developing ROE to support information and cyber operations can prove challenging due to compartmentalized or closely-held authorities, requiring increased dialogue with national authorities and reliance on subject matter experts.

⁶ Among the authorities that need to be identified very early in planning are supplemental ROE addressing nonlethal actions to assist in shaping the operational environment. Nonlethal measures are often needed early in mission execution and usually require clearly defined justifications and more time for approval, dissemination, and training. A common example involves planning for the use of riot control agents (RCA) as a crowd control measure in non-combat situations during non-combatant evacuation or personnel recovery operations.

Guidance and intent are often provided in tactical directives or FRAGOs. These are means by which commanders provide guidance on how force will be applied to ensure mission accomplishment. These directives never limit the commander from employing force in unit self-defense. The commander, based on his assessment of the capabilities of the force together with understanding of the purpose of the operation and the strategic environment, crafts the mission profile to accomplish the mission within the approved ROE.



The figure on the left illustrates the view of ROE and use of force from the tactical and operational level. It also shows the value of properly crafting the mission profile within given authorities (and ROE) while also proactively determining the need and timing for additional authorities and/or supplemental ROE measures. The figure also depicts the best practice of proactive development of supplemental ROE measures and commander's guidance and intent to set conditions (e.g.,

necessary authorities) for anticipated and sudden changes to the mission profile. We have seen instances where reactive ROE development has lagged behind operational requirements placing mission accomplishment at risk. We have also seen instances where unclear guidance from the commander has led to confusion in executing to the approved ROE. Staffs that are proactive in generation of appropriate and robust supplemental ROE measures and requisite justifications stay ahead of operational requirements and minimize those vulnerabilities. Clear, concise guidance, a clear statement of the commander's intent, and timely, accurate responses to new missions or sudden changes to missions also mitigate vulnerabilities. This proactive approach allows time for subordinate commanders to understand the approved ROE and train their forces to the approved measures.

Tactical directives are an example of commander's guidance aimed at guiding the use of force. Some examples include how fires will be employed for mission success such as control measures for direct and indirect fires and the processes for delivering those fires or how and when to perform patrols or enter compounds (control measures for time of day and processes for entry). Another example are the more focused Escalation of Force (EOF) directives that provide very explicit direction, such as specific manning of check points and security requirements for convoys, in an attempt to guide the actions of the "strategic corporal" where the tactical actions of an individual can produce strategic effects, either negative or positive.

Commander's guidance does not change the ROE or the inherent right to unit self-defense. Rather, it assists the force in determining when and how to employ authorized force. For example, the EOF process helps determine if a potential threat is real and provides tailored responses that help discern hostile intent.

EOF is a process by which the commander seeks to match force to the threat, through guidance and intent promoting mission accomplishment and force protection, while preventing unnecessary civilian casualties. We have seen this EOF process developed and employed extensively in the stability operations in Iraq and Afghanistan. It is likely to remain a key consideration in future operations that require boots on the ground (BOG).

Tactical directives on targeting and EOF allow for a reasonable and prudent effort to react to or control a situation without force, to value each life, and respect the population. Implicit in this effort is the need to continuously assess whether the objective has been achieved and to stop immediately when the threat has been sufficiently reduced or eliminated. The holistic approach developed over the past decade of war begins with the premise that a reasonable effort should be made to control a situation without force and that lethal force should only be used where absolutely necessary. Among the best practices we have observed are involving the host nation forces and local leadership in tailoring these measures to the local environment, educating the population on the mission and how operations are conducted, and training U.S. forces to recognize pattern of life indicators that militate against the use of force in specific circumstances.

Insights:

- ROE development and management is an operations and planner responsibility, with proactive ROE development assisted by legal, interagency, inter-organizational, and policy advisors. This includes having a system in place to ensure timely dissemination, training, understanding, and implementation of ROE.
- Proactive ROE development supports the plan and anticipates branches and sequels to help mitigate potential vulnerabilities.

Best Practices:

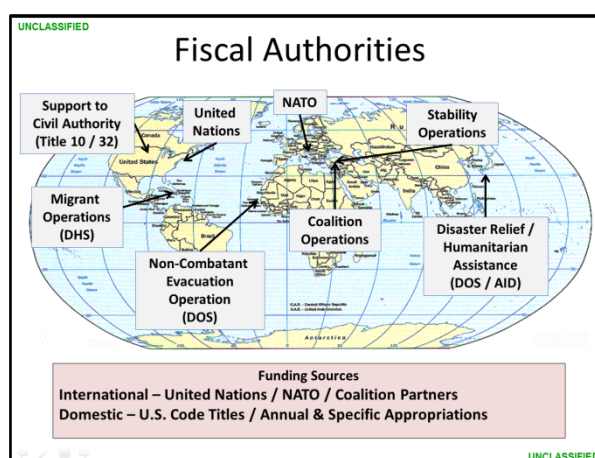
- The use of an ROEWG, with the proper membership and J3 or J5 oversight allows for proactive focused development and management of supplemental ROE measures.
- FRAGOs and Tactical Directives are methods to provide the commander's guidance and intent on the use of force in mission accomplishment and how to employ approved targeting and EOF measures.

6.0 AUTHORITY TO SPEND MONEY. As our military forces continue to operate with coalition and inter-organizational partners, achieving unity of effort among the many disparate stakeholders presents a significant challenge. Perhaps nowhere is the authorities challenge more difficult than in the area of contracts and funding, involving numerous funding organizations, sources, statutes, and directives. As the staff develops nonlethal means involving contracting and funding in support of the mission, the commander must ensure compliance with the associated fiscal mandates.

The statutes and regulations that govern contracting generally authorize commanders to take actions that support mission accomplishment. Indeed, regulations encourage “thinking outside the box” to accomplish the mission. Both law and regulation support the position that a contract approach in support of the mission is presumed legal unless prohibited by law.

On the other hand, fiscal law, that body of authority that dictates how contracts and other expenditures are paid for, is very restrictive. Congress directs when and how public funds may be expended and does so in very detailed fashion. As a rule, funds may be expended for a specific purpose only if that purpose is spelled out in the authorizing legislation. In addition, administrative, civil, and criminal sanctions against the commander provide teeth for this restrictive fiscal philosophy. Fiscal law requires commanders to “balance the fiscal books” by following mandated direction while proactively taking those contract actions that support mission accomplishment. All of these laws are typically found in standing statutes and annual and supplemental appropriation and authorization acts.

a. Fiscal. The number and complexity of U.S. Government funding organizations and sources, associated Congressional fiscal law mandates, and internal agency requirements is staggering. In addition, there are many funding sources from partner nations, host nations, and non-governmental organizations (NGOs), along with their associated mandates and regulations. The gaps, seams, and overlaps between these sources of funding can complicate the planning and execution of whole-of-government and inter-organizational operations. This complexity can be clearly seen in humanitarian assistance operations, where funding comes from many USG, partner nation, and NGO sources. Each of these sources has detailed fiscal requirements that impact on each other as unity of effort is achieved.



Those staffs with established processes for integrating contracts and funding across the numerous staff directorates (including comptroller, legal, operations, logistics, civil military operations, civil affairs, training and development, and interagency directorates) have been the most successful in enabling a comprehensive approach to mission accomplishment. The commander can mitigate risk in the use of funding organizations and sources with their associated detailed mandates by having quality subject matter expertise supporting planning and decision making.

Success in this area requires detailed knowledge and understanding of the complex fiscal issues and processes. This expertise on the staff can enrich decisions and help ensure likelihood of funding success.

Immature staff processes or a lack of expertise on the staff can cause weakness in the vetting of fiscal packages. The legal, interagency, inter-organizational, and policy advisors can assist in preventing the three basic types of fiscal violations (i.e., time, purpose, and amount). Fiscal expertise resident in the staff reduces the amount of fiscal risk associated with a course of action. These individuals participate in the staff acquisition processes and interact with personnel in other staff sections. They perform a review of the acquisition process and understand how to engage the various stakeholders to ensure the proper checks and balances are maintained.⁷

b. Contracting. Contracting leverages the associated fiscal organizations and sources noted above. Contract development and management is key to success as they provide the essential mandates and requirements to the contracted organization and oversight of action. There has been significant evolution in this area with both contract development and management taking on increased attention – and the associated establishment of contracting organizations supporting the joint forces to ensure quality. Successful staffs typically have an operational contract support process which includes contracting officer representatives, comptroller, legal, as well as other sections to ensure quality development and close monitoring of outsourced contracts. Staffs will often develop several Courses of Action (COA) for activities requiring funding. One COA normally attempts to satisfy the requirement using organic or military assets. Other COAs address full or partial outsourcing through contracting processes. Importantly, as portions of a “validated requirement” are outsourced, the commander loses some degree of control over the execution of the requirement, relying exclusively on the terms of the contract.⁸

Insights:

- Incorporate contract and fiscal expertise in the planning process.
- Understand the acquisition process and appropriate checks and balances to mitigate fiscal risk.

Best Practices:

- Integrate staff-wide expertise in contracting and funding (including the comptroller, legal advisor, operations, logistics, civil-military operations, civil affairs, training and development, and inter-organizational directorates) to ensure optimal staff recommendations.
- Established staff planning processes ensure quality contract development and management to best outsource requirements.

⁷ The acquisition process, as generally discussed in JP 4-10, includes: (i) accurate articulation of the operational requirement, (ii) identifying multiple courses of action capable of satisfying the requirement, (iii) certification of funding as available for the various funding sources appropriate to each identified course of action, and (iv) ensuring the various courses of action are adequately vetted, well supported, and that a documented recommendation is presented to the commander for decision. The commander's decision to pursue the project “validates” the requirement, however, this “validation” must be supported by a fully vetted package; otherwise the commander is placed in a fiscal dilemma. The degree to which a requirement is accurately articulated can be the difference between success and failure of a particular mission and determine the potential for and extent of risk exposure a commander has relative to a Congressional mandate. A solid explanation of the project requirements and the direct relationship to the JTF mission will assist in obtaining the proper funding for projects and successes for the mission.

⁸ There are procurement mechanisms in place to mitigate this. These can include working groups, actions of the Contracting Representative, or other command structures such as the Joint Theater Contingency Contracting Command (JTCCC) under Commander, U.S. Central Command.

7.0 AUTHORITY OVER PEOPLE.

a. Military Justice and Discipline. Joint military justice authority resides with the combatant commanders, who may delegate additional authorities to subordinate joint force commanders. The joint task force (JTF) commander inherently possesses only military justice authority over JTF members of the same service as the commander. This authority can be delegated in whole, in part, or on a case-by-case basis. Military justice is time and resource consuming, partially due to the independence of the military judge in scheduling the trial and the autonomy of the defense counsel, who is expected to provide zealous representation of the service member and may not be focused on the timeliness or efficiency of the proceedings. Additionally, the component commanders may have a service cultural view of military justice that will argue against a broad joint military justice policy. The JTF commander must balance the resource strain of joint military justice with the uniformity and control gained by seeking joint military justice authority.

b. Command authority. The joint force commander has command authority over uniformed service members and U.S. Government civilian employees accompanying the force. Typically, these members are also subject to Status of Forces Agreements (SOFAs) or other agreements that determine how incidents with local residents will be handled. The commander's ability to quickly and thoroughly investigate incidents, determine accountability, think through second order effects, and take appropriate action directly affects the image portrayed to the local, national, and international public. Experienced investigators are central to this process.

c. Contractors. The military commander does not exercise command authority over contractors. Contractors are managed in accordance with the terms of their specific contract. Efforts to expand criminal authority over contractors accompanying the force have achieved limited success, but are not always applicable to a given set of facts. The commander relies on the Contracting Officer, working with the SJA, to understand and use the management measures within the terms of each contract. Regardless of whom a contractor works for or their background, contractor misconduct in the operating area can blemish the image of our forces and mission. The SJA section, contracting officer, and the public affairs officer should have a planned process to respond to actions of contractors as well as military members which may affect the mission. Efforts to centralize management and accountability of contractors have proven essential tools in this effort, and include specialized task forces to assist in this effort. Efforts by Congress in recent years to extend Federal criminal jurisdiction over deployed contractors through the Military Extraterritorial Jurisdiction Act have created options for serious crimes committed by contractors in the operating environment.

Insights:

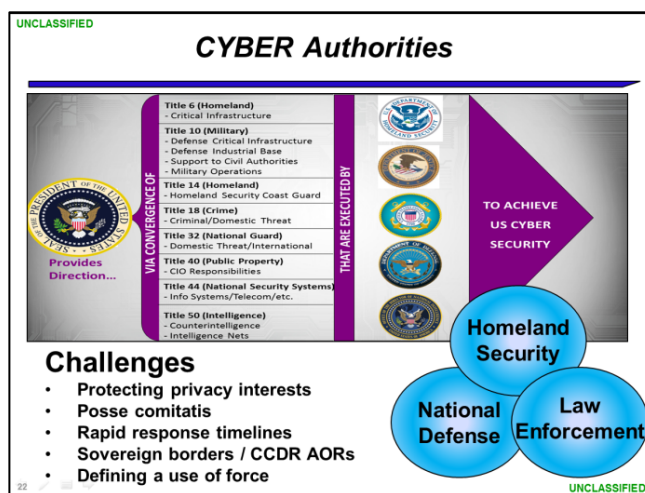
- Balance the desire for uniform military justice and centralized good order and discipline against the potential resource strain on the JTF commander and staff.
- Recognize the competing nature of service-specific military justice concerns.
- Include the specific service component senior enlisted leader (SEL) along with the joint force SEL in discussions regarding enforcement of good order and discipline to ensure service component equities are maintained.
- Establish processes to respond to actions involving investigations and discipline for service members, government civilians, and contractors with the proper stakeholder inclusion and input.

8.0 CYBER AUTHORITIES. Military and civilian critical infrastructure comes under electronic snooping and malicious attack from a variety of foreign and domestic entities on a daily basis. The authority to protect the resilience and redundancy of critical military infrastructure resides with DOD under Title 10. In addition to maintaining and protecting military systems and infrastructure, DOD has a vital interest in the continued availability of communications and other civilian infrastructure. The authority to protect the resilience and redundancy of critical civilian infrastructure, however, resides with the National Security Agency (NSA) under Title 50. In time of war or national emergency, the President has the authority to take control of certain critical civilian infrastructure, such as occurred with national control of telephone and radio during World War I. This power, however, does not extend to the many contingency operations where loss of computer-coordinated services would seriously erode military effectiveness. Under current authorities, DOD can and does inform U.S. Government agencies regarding wartime and emergency infrastructure needs and assists in developing plans to satisfy those needs. This cooperation and coordination has been enhanced by the creation of U.S. Cyber Command and the fact that Commander, USCYBERCOM is dual-hatted as the Director, NSA.

Aside from the distinction between authorities in Title 10 and Title 50, the Posse Comitatus Act generally prohibits active participation of the military in enforcing civilian laws. Cyber operations are also further constrained for both the military and civilian agencies by privacy laws and civil liberties. The military can, of course, meet and address a national security threat, consistent with guidance from civilian authority; nevertheless, military commanders are bound to remain within the lines drawn for them by domestic law.

International authorities affecting cyber operations are scarce, as customary practices are recognized and agreement is reached between nations on accepted principles in this developing area. In 2011, the White House released an International Strategy for Cyberspace, in which the U.S. took the position that the development of rules in cyber does not require the development of new customary international law or render existing international law obsolete. The strategy goes on to emphasize that there is work to be done in determining how to supplement existing international law to fit new concepts developed in cyber operations. Also, the recent release of the Tallinn Manual by NATO's Cooperative Cyber Defence Centre of Excellence is the culmination of a three-year project where internationally recognized subject matter experts unanimously adopted standards that reflect customary international law as it relates to cyber.

Knowledge and understanding of cyber capabilities and the authorities under which those capabilities can be employed is necessary in every mission planning effort. These operations generally fall into one of three categories: Department of Defense Information Network (DODIN) Operations, involving the design, installation, operation, and maintenance of



information systems; Defensive Cyber Operations (DCO), where measures are put in place to keep malicious entry into military and other systems at bay; and Offensive Cyber Operations (OCO), that deny, degrade, disrupt, destroy, or manipulate another system. In addition to the application of domestic law to cyber operations, the Law of War may apply when the effects of those operations involve foreign systems. In addition, differing national laws and policies regarding cyber operations may create ethical dilemmas for commanders of multi-national forces when national elements under their command conduct cyber operations lawful under their national construct, but not permitted by the laws of the commander's nation.

9.0 INTELLIGENCE OVERSIGHT. Authorities, in the form of both law and policy, must be well understood and appropriately applied in order to properly acquire and handle information that supports mission planning and decision-making. Of particular importance are constraints and restraints with respect to intelligence involving U.S. persons, corporations, and domestically-based telecommunication hubs and databases. These legal and policy restraints can limit or even prohibit the acquisition of information from within U.S. territories. Additional restraints and constraints apply to the sharing of intelligence outside of DOD with inter-organizational and foreign mission partners. Knowledge of the many caveats and exceptions to these restraints and constraints, as well as understanding of the authorities that enable information and intelligence sharing, contribute to developing a common and shared understanding and unity of effort with mission partners. Where authorities are not well understood or are incorrectly applied, intelligence operations can violate domestic law, run afoul of national or DOD policies, or cause damage to U.S. interests and relationships. We have observed that when commands correctly pursue required intelligence authorities, to include policy exceptions and waivers, mission planning and execution is more effective and is accompanied by reduced risk. On the other hand, where commands do not pursue authorities for intelligence operations, the lack of useful intelligence has the opposite effect. An excellent starting point in identifying these authorities can be found in DOD Directive 5240.1-R for intelligence oversight; the Foreign Intelligence Surveillance Act for missions involving domestic operations and information; and National Disclosure Policy 1 for foreign disclosure.

Glossary

Abbreviations and Acronyms

AMIO – Alien Migrant Interdiction Operations
APAN – All Partners Access Network
BOG – Boots on the Ground
CCJO – Capstone Concept for Joint Operations
COA – Course of Action
CYBERCOM – Cyber Command
DAFL – Directive Authority for Logistics
DCO – Defensive Cyber Operations
DIME – Diplomatic, Informational, Military,
and Economic
DODIN – Department of Defense Information
Network
DSCA – Defense Support of Civil Authorities
EOF – Escalation of Force
FHA – Foreign Humanitarian Assistance
FRAGO – Fragmentary Order
JDEIS – Joint Doctrine, Education, and
Training Electronic Information System
JLLIS – Joint Lessons Learned Information
System
JOC – Joint Operations Center
JTF – Joint Task Force
NEO – Non-combatant Evacuation Operations
NGO – Non-Governmental Organization
OCO – Offensive Cyber Operations
OPCON – Operational Control
RCA – Riot Control Agents
ROE – Rules of Engagement
ROEWG – Rules of Engagement Working
Group
SEL – Senior Enlisted Leader
SJA – Staff Judge Advocate
SOFA – Status of Forces Agreements
SROE – Standing Rules of Engagement
TACON – Tactical Control
UCP – Unified Command Plan
UNSCR – U.N. Security Council Resolution

This page intentionally left blank



**The Joint Staff J7
116 Lake View Parkway
Suffolk, VA 23435-2697**

Approved for public release; distribution is unlimited